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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 March 1997]

1. The war in Sri Lanka is between the forces of the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) and has existed since the period immediately following the massacre of Tamils in Colombo in 1983. 1/ By 1986 the Finance Minister questioned how elections could take place when the country was "engulfed in a civil war". 2/ In 1987 the Commission called on the parties to the conflict "to respect fully the universally accepted rules of humanitarian law". 3/

2. In July 1987 India and Sri Lanka signed the Indo-Sri Lanka Accord to "resolv[e] the ethnic problem of Sri Lanka", 4/ to enable India to protect itself from "foreign military and intelligence personnel" 5/ and to prevent Trincomalee harbour or other Sri Lankan ports from being used by foreign powers for military purposes. 6/ In October 1987 India began military operations against the LTTE.

3. Since the withdrawal of Indian forces, Sri Lankan forces have been almost continually engaged in military operations against the LTTE, with both sides claiming some military victories. The Riviresa campaign in the autumn of 1995 by the Sri Lankan Army pushed into Jaffna and the LTTE retreated to other areas under their control.

4. On the LTTE side, in July 1996 the LTTE overran Mullaitivu Army camp and arsenal, killing about 1,200 Sri Lankan troops. 7/ The LTTE sustained about 250 casualties, including a large number of women combat troops. 8/ The LTTE also captured many arms and much ammunition in an ambush of a Sri Lankan Army unit at Thenmaratchi on 28 July 1996. The LTTE "Sea Tigers" sunk five vessels of the Sri Lankan Navy in Trincomalee in April and October 1996.

5. A fundamental principle of the Hague body of humanitarian law is that combatants in a war are entitled to combatant status, codified in article 1 of the Hague Regulations of 1907. Because there is a war in Sir Lanka between government forces and the LTTE, the LTTE have combatant status and all the rights of combat. This status is inconsistent with a label of "terrorist" used by the Government of Sri Lanka to refer to the LTTE - a terrorist has neither combatant status nor the right to engage in combat.

6. The war in Sri Lanka is a war of national liberation based on the Tamils' exceptionally strong claim to self-determination. The three main elements of a claim to self-determination - historic self-governance in an identifiable territory, a distinct culture and a national will and capacity to govern - are all present in the Tamil case.

7. The Tamil people have a centuries-old tradition of independence on the island of Ceylon dating from the sixth century B.C. and referred to in the great Indian epics Mahabharata and Ramavana. 9/ Early kings founded the ancient capital Anuradhapura. By 1214 A.D. the Tamil kingdom of Jaffna extended into current Tamil lands in the north and east. A 1789 map of the area by the cartographer Du Peron clearly indicates the territorial divisions of two kingdoms on the island - the Tamil in the north and east and the Sinhala in the west and south.

8. The colonial period began in the early sixteenth century when the Portuguese captured the Sinhalese kingdom. The Tamil kingdom remained free until 1621, more than 100 years later, when the Portuguese captured the Tamil king Sankili. 10/ The Portuguese were defeated by the Dutch in 1658, to be replaced by the British in 1796, who by 1833 governed both Tamil and Sinhala kingdoms under unitary colonial rule.

9. The first British colonial secretary, Sir Hugo Cleghorn, attested to profound cultural, linguistic and religious differences in the two kingdoms. In his now-famous Minute he wrote:

> "Two different nations, from the very ancient period, have divided between them the possession of the island: the Sinhalese inhabiting the interior in its Southern and Western parts from the river Wallouve to

that of Chillaw, and the Malabars [Tamils] who possess the Northern and Eastern Districts. These two nations differ entirely in their religions, language and manners."

10. The third element of self-determination - national will and capacity to govern - is also exceptionally strong in the Tamil case. At the close of the colonial era, the British sought to preserve a unitary State and political power was consolidated in the hands of the Sinhala politicians due to the fact that the Sinhala people outnumber the Tamil people by about 5 to 1. The Sinhala leadership chose the old symbol of the Sinhala kingdom - the lion - for its national flag. Other anti-Tamil measures deepened a growing rift between Tamil and Sinhala.

11. By the mid-1970s the three leading Tamil politicians - Ponnambalam, Chelvanayagam and Thondaman - formed The Tamil United Front and advocated self-determination. Running on a separatist plank, Chelvanayagam won a huge majority in a 1975 election. In May 1976 the Tamil leadership passed the Vaddukoddai resolution calling for a separate Tamil State. In the 1977 general elections, the Tamil parties ran on a platform of Tamil "sovereignty in its homeland on the basis of self-determination" 11/ and won 18 out of the available 19 seats. During this period the LTTE was formed from a TULF youth group, and adopted the tiger symbol of the Tamil kingdom.

12. Each year of the war has seen more and more organization among the Tamil people in Sri Lanka and in the diaspora in favour of self-determination. For example, in an impassioned speech at a major peace conference in Australia, The Rev. Dr. S.J. Emmanuel, Vicar-General of the Diocese of Jaffna stated:

> "From amidst the deafening sounds of thousands of bombs falling on our soil and consuming sacred lives, I cry out with Moses of old, 'Let my people go from this slavery to freedom'." 12/

13. As in all wars, the international community has a right to investigate compliance with humanitarian law in the Sri Lanka-Tamil war. The violations of human rights that the Commission's working groups and rapporteurs have documented are also violations of the rules of war or violations of humanitarian law (war crimes) when they occur in the context of the war, as most of them do.

14. Verification of violations of the rules of war is a serious problem in the Sri Lanka-Tamil war, in part because the Sir Lankan Government denies access to international, impartial monitors. This situation has allowed the Government to make wild accusations against the LTTE in an attempt to damage the international acceptance of the LTTE and to reinforce its labelling of the LTTE as "terrorist". This climate of hostility makes the task of those investigating alleged humanitarian law and human rights violations even harder.

15. IED/HLP urges the Commission to address seriously the Sri Lanka-Tamil war and to offer its services to the parties to achieve a lasting resolution of this long conflict.

Notes

1/ Many date the conflict from 1976, when the Tamil United Liberation Front (TULF) passed a resolution proclaiming the right of Tamils to their own State and called upon Tamil youth to "throw themselves fully into the sacred fight for freedom ..." (TULF resolution of 14 May 1976, called the Vaddukoddai resolution). The United States Department of State dates the conflict from 1983 (United States Department of State, 1995 Annual Report on Human Rights (1996)). United States courts have also dated the conflict since at least 1983. See, e.g. Ratnam v. Lewis, 892 F. Supp. 619, 625 (D.N.J. 1996): "The armed conflict ... commenced in 1983 and has continued since that date."

2/ Statement of Ronnie de Mel, Finance Minister, quoted in The Daily News (Colombo), 20 January 1986. In another report on the same day, the Sri Lankan Navy lost a gunboat to the LTTE. The Sun (Colombo), 20 January 1986.

3/ United Nations Commission on Human Rights resolution 1987/61, para. 1.

4/ Accord, preamble.

5/ Letter from Rajiv Gandhi to J.R. Jayewardene, annexed to the Accord.

6/ Ibid. At the time of the Accord, there were talks under way between the United States and Sri Lanka regarding possible United States use of Trincomalee harbour.

7/ The LTTE turned over 441 bodies to the International Committee of the Red Cross (ICRC) on 21 July 1996. LTTE press release, 21 July 1996.

8/ The LTTE has women combatants (the Women's Military Unit, WMU) that use all weapons used by men combatants, including surface-to-air missiles (SAMs) and other heavy artillery. Since 1989 the WMU has carried out many successful large-scale military operations against military bases and against military vessels and aircraft. See Adele Ann, Women Fighters of Liberation Tigers (London, 1993). In Tamil-controlled areas, women play a significant role in civil administration. Ibid.

9/ James Karan, "The Tamil national struggle" in The Tamil National Question, N. Seevaratnam (ed.), Delhi, 1989 at 58.

10/ Ibid. Sankili was taken to Goa and hanged.

11/ TULF Election Manifesto (1977), reprinted in James Karan, op. cit. at 65.

12/ S.J. Emmanuel, "Let my people go" in Australia Human Rights Foundation, Peace with Justice (1996) at 68, 75.